IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Chunni Lal Vs. Mohd. Issakh

S.B.CIVIL SECOND APPEAL NO.300/1994
Against the judgment dated 2.6.94 passed in
Civil Appeal Decree No. 12/91

Date of judgment : 14th May, 2007

PRESENT

HON'BLE MR.JUSTICE PRAKASH TATIA

Mr.R.R.Nagori)
Mr. Alkesh Agarwal, for the appellant
Mr.R.K.Thanvi, for the respondents

BY THE COURT :

This appeal has been preferred by the landlord plaintiff against the judgment and decree of the Appellate Court dated 02.06.1994 by which the Appellate Court dismissed the plaintiff-appellant's regular first appeal preferred against dismissal of his suit by the trial court vide judgment and decree dated 17.5.1991.

Brief facts of the case are that plaintiff filed the suit for eviction of the tenant-respondent on the ground of default in payment of rent and making material alteration by the tenant in the suit premises. The plaintiff also sought decree for eviction of tenant on ground of need of the suit premises. The plaintiff's suit was

dismissed by the trial court vide judgment and decree dated 17.05.1991 after deciding all the issues against the plaintiff. In the plaintiff's regular first appeal, the First Appellate Court after rejecting the grounds for eviction, dismissed the appeal of the plaintiff-appellant landlord. Hence this second apeal.

The following substantial question of law are involved in this appeal:-

(1)Whether defendant/respondent is entitled to get the benefit of Sub-sec. (6) of Sec. 13 of Rajasthan (Control of Rent & Eviction) Act of 1950, if so, its effect?

(2)Whether both the courts below have recorded a perverse finding about the reasonable and bonafide necessity of the son of the plaintiff/appellant?

(3)Whether both the courts below have committed serious error of law in comparing the comparative hardships of the plaintiff and defendant?

Learned counsel for the appellant vehemently submitted that it was the duty of the defendant-tenant to prove that he deposited the amount as determined by the trial court and further to take benefit under Section 13(6) of the Act of 1950, the tenant was required to prove that he deposited the rent during the trial of the suit within time allowed by the Act of 1950. It is submitted that even if no application was filed by the plaintiff/appellant before the trial

court or before the First appellant court for striking out the defence of the defendant under Section 13 (5) of the Act of 1950, even then the defendant is not entitle to benefit under sub-section (6) of Section 13 of the Act of 1950 if he failed to deposited the determined rent or failed to deposit the rent during the trial of the suit. Therefore, it is for the tenant to prove that he has deposited the rent in time.

Learned counsel for the appellant-landlord also submitted that findings of two courts below on the question of bona fide necessity of the sons of plaintiff-appellant is perverse. It is also submitted that two courts below further committed error of law in deciding the question of hardship in favour of the tenant and against the landlord plaintiff.

Learned counsel for the respondent-tenant raised objection with respect of the maintainability of the appeal itself on the ground that landlord-appellant did not submit copy of the decree passed by the trial court nor he has submitted copy of the judgment of the trial court. Therefore, appeal of the appellant is not maintainable. So far as default is concerned, learned counsel for the respondents submitted that whether the tenant committed default in payment of rent after filing of the suit, is a question of fact and for that purpose the plaintiff has not laid down any factual

foundation for determination of this question before the trial court or before the appellate court. It is also submitted that the plaintiff wants that on plaintiff's vague plea of default the court itself should have searched the rent receipts from case file or should have called upon the defendant to explain his deposit of rent of each month even when the fact of deposit of rent by the respondent tenant was in knowledge of the plaintiff as the rent of few years have been deposited by tenant respondent in plaintiff's own bank.

Learned counsel for the respondents-tenant also submitted that there is specific provision i.e. Section 13(5) of the Act, 1950 under which the trial court could have struck off defence of the tenant provided the landlord would have moved an application for striking of the defence of the defendant with specific allegation of default of any month. Not only this without prejudice to the above argument, if there was default in payment of rent, then the plaintiff could have pointed out specifically about the default of any month on the basis of which the defendant could have adequately replied about the question of fact. The plaintiff did not alleged default of defendant in payment of rent of any specific month during long period of trial. Not only this but even after rejection of his said plea even in first appeal, the landlord could not disclose in memo of appeal or during arguments any particulars about default of the tenant in payment of rent. Learned counsel for the respondent

tenant submitted that the landlord malafidely, to prejudice the court, has raised this ground which is clear from the reason that the landlord himself was duly paid the rent by deposit of the rent in the court from 1986 to 1989 and, thereafter, by depositing the rent in the plaintiff's own bank account for entire period. It is also submitted that the plea of waiver was also available to the respondent tenant against plaintiff but when facts were not known to the respondent and still are not known to the respondent, he cannot take appropriate defence. Therefore, the vague plea of the defendant cannot be entertained.

So far as personal bona fide necessity is concerned, the plaintiff filed the two separate suits against his two tenants on the ground of same personal bona fide necessity. The trial court as well as first appellate court dismissed the plaintiff's both the suits on on finding that there is no need of the suit premises to the plaintiff or his sons. Learned counsel for the respondents submitted that now this court has passed the eviction decree against another tenant on 08.05.2007 in SBCSA No. 221/1994. In that suit the plaintiff sought eviction of tenant on the ground of personal bona fide necessity of the suit premises for plaintiff as well as his sons, therefore, in view of the subsequent events the appeal of the appellant deserves to be dismissed. Learned counsel for the respondents submitted that the finding of the trial court on the question of personal bona fide

necessity is a pure question of fact and is not vitiated by any lawful reasons.

I considered the submissions of the learned counsel for the parties. It is not in dispute that plaintiff-appellant did not submit the copy of the decree of the trial court which he challenged in the appeal. Plaintiff-appellant even did not submit the copy of judgment of the trial court. The appellant submitted an application in second appeal after 13 years and sought permission to produce the copy of the judgment as well as copies of the decree and judgment of the trial court and prayed that above copies were not submitted because of bona fide mistake only. According to application, this court by implication dispensed with filing of the copy of the judgment and decree, as the appeal has been admitted by this court.

The appeal of the appellant could have been dismissed only on the ground that decree under challenged of the trial court has not been submitted in this appeal, and further that even copy of the judgment has not been submitted. The appellant's contention that this court might have, by implication dispensed with filing of the certified copy of the judgment and decree of the trial court appears to be wrong because of the reason that on 12.04.1996, learned counsel for the appellant submitted that the present appeal will be tagged with SBCSA No. 221/94 and, thereafter, on 18.11.96 the

substantial questions of law were framed. There was no occasion for court to apply mind about the maintainability of the appeal. Be that as it may, since this Court is of view that appeal deserves to be dismissed on merit, the appeal is not being dismissed as not maintainable.

So far as default in payment of rent during pendency of the suit, the appellant for the reasons best known to the appellant, did not submit before the trial court or before First Appellate Court or before this court in second appeal the fact of default of tenant of not depositing the rent as per Sub Section (4) of Section 13 of the Act of 1950. The defendant could have shown that he has deposited the rent in time or the court could have recorded finding about any alleged default of tenant in payment of rent only if the plaintiff would have disclosed the facts. The appellant-landlord not only did not move an application under Section 13(5) of the Act of 1950 but even during the course of the arguments before the trial court or first appellate court could not point out any specific default in payment of rent, which according to plaintiff-appellant was committed by the tenant during the pendency of the suit. Even if the plaintiff had no intention to take benefit under Section 5 of the Section 13 of the Act of 1950, then he cannot deprive the tenant from meeting with any ground on the basis of which the landlord is seeking adverse order against the tenant. In view of the above reasons, the appellant-

landlord himself left no alternative with the two courts below to reject the absolutely vague plea of the landlord-appellant about the default in payment of rent by the tenant.

In view of the above reasons, it is held that in the facts and circumstances of this case, the two courts below rightly granted benefit to the tenant under Sub Section 6 of Section 13 of the Act of 1950.

So far as personal bona fide necessity of the plaintiff's is concerned, the two courts below considered the evidence of the plaintiff as well as defendant. It will be worthwhile to mention here that plaintiff admittedly filed two suits for eviction of two tenants for the same purpose and without disclosing the reasons for filing of two suits. In the facts and circumstances it alone may not have been fatal for the suit but since the plaintiff's one suit has been decreed by this court for eviction of the tenant then that fact certainly relevant for deciding the present second appeal by this court and taking note of subsequent events of passing of the decree in favour of the appellant by which the appellant will get the possession of the one shop which will satisfy the need of the plaintiff's and his son and otherwise also from the evidence it appears that two courts below carefully considered the evidence of both the parties and, thereafter, recorded the findings of fact which cannot be said to be

perverse. In view of the above question No.2 is decided against the appellant. The question No.3 is therefore, becomes irrelevant.

In view of the above reasons, the appeal of the appellant dismissed.

No order as to costs.

(PRAKASH TATIA),J.

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